



**B. JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338 because the action arises under the Lanham Act, 15 U.S.C. §§ 1051, *et seq.* This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a). This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332, because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and this lawsuit is between citizens of different states.

4. Venue is proper in this federal judicial district pursuant to 28 U.S.C. § 1391(b), because AFFSI resides in this district and because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district.


**C. FACTS**



**American Fidelity's AMERICAN FIDELITY Marks**

5. American Fidelity Corporation is the parent of American Fidelity Assurance Company. American Fidelity Assurance Company's services include underwriting and administration of health, life, and disability insurance, annuity underwriting and brokerage services, and mortgage lending services. American Fidelity Assurance Company offers these services in Illinois and throughout much of the United States. American Fidelity Assurance Company promotes its services through various media including its website, [www.americanfidelity.com](http://www.americanfidelity.com).

6. Since long before AFFSI's acts complained of herein, American Fidelity Assurance Company has offered the aforesaid financial and insurance services through a family of trademarks incorporating AMERICAN FIDELITY and the abbreviated name AMERICAN FIDELITY (hereinafter collectively, the "AMERICAN FIDELITY Name and Mark").

7. American Fidelity owns federal registrations issued by the United States Patent and Trademark Office incorporating AMERICAN FIDELITY in a variety of formats and for a variety of services, including the following registrations:

<u>Mark</u>	<u>U.S. Registration No.</u>	<u>Services</u>
AMERICAN FIDELITY GROUP	1,614,218	<u>Class 36:</u> Underwriting life, health and casualty insurance, and investing the funds of others.
AMERICAN FIDELITY ASSURANCE COMPANY	4,101,117	<u>Class 36:</u> Insurance and financial services, namely, underwriting, issuing and administration of life, health and disability income insurance, long-term care insurance, accident insurance, Section 125 cafeteria insurance plans, health savings accounts, flexible spending accounts and health reimbursement accounts; annuity brokerage services; annuity underwriting.
AMERICAN FIDELITY EDUCATIONAL SERVICES	3,654,721	<u>Class 36:</u> Underwriting and brokerage for life, health, disability insurance and annuities.
AMERICAN FIDELITY AWD	3,181,430	<u>Class 36:</u> Insurance underwriting services, namely, life, health and disability insurance.
 American Fidelity Securities, Inc.	3,633,896	<u>Class 36:</u> Annuity brokerage and annuity underwriting.

	3,300,804	<u>Class 36:</u> Financial services, namely, providing mutual fund investments and the underwriting and administering of variable annuities.
AMERICAN FIDELITY DUAL STRATEGY FUND, INC.	3,284,515	<u>Class 36:</u> Financial services, namely, providing mutual fund investments and the underwriting and administering of variable annuities.
	2,727,597	<u>Class 36:</u> Insurance and financial services, namely, life, accident and health coverage that are accessible at a site on a global computer network.

8. Each of the trademark registrations identified in Paragraph 7 above is valid and subsisting. Registration Nos. 1,614,218; 3,181,430; 3,300,804; 3,284,515; and 2,727,597 are incontestable under U.S. law.

9. Since before the acts of AFFSI complained of herein, American Fidelity Assurance Company has sold a considerable amount of its aforesaid services in the United States in connection with the AMERICAN FIDELITY Name and Mark.

10. American Fidelity Assurance Company's business also includes providing mortgage lending services in Illinois and in other states in connection with the AMERICAN FIDELITY Name and Mark.

11. Since before the acts of AFFSI complained of herein, American Fidelity Assurance Company has spent a considerable amount of money advertising and promoting all of

its aforesaid services in the United States in connection with the AMERICAN FIDELITY Name and Mark.

12. As a result of the aforesaid extensive sales, advertising and promotion, the AMERICAN FIDELITY Name and Mark is well and favorably known, and represents valuable goodwill.

**AFFSI's Use of AMERICAN FIDELITY**

13. Since well after American Fidelity Assurance Company's first use of the AMERICAN FIDELITY Name and Mark, AFFSI has used AMERICAN FIDELITY and American Fidelity Financial Services, Inc., in connection with the advertising, promotion and sale of financial services, including mortgage services. This includes the recent promotion of these services in connection with AMERICAN FIDELITY and American Fidelity Financial Services, Inc., on the website [www.mortgagelenderpro.com](http://www.mortgagelenderpro.com).

14. AFFSI's use of AMERICAN FIDELITY and American Fidelity Financial Services, Inc. is without American Fidelity's license, authorization or consent.

15. Prior to bringing suit, American Fidelity attempted to resolve this dispute by first objecting in writing to AFFSI's aforesaid use of AMERICAN FIDELITY and American Fidelity Financial Services, Inc., and asking that AFFSI stop its aforesaid infringing use, but AFFSI has refused to comply with American Fidelity's demand.

16. On information and belief, AFFSI's continued use of AMERICAN FIDELITY and American Fidelity Financial Services, Inc., despite American Fidelity's objection, is a deliberate attempt to trade off of American Fidelity's goodwill in its AMERICAN FIDELITY Name and Mark.

17. On information and belief, AFFSI used to operate and/or do business under the name American Federal Financial Services, Inc. (“American Federal”) and had been the subject of mortgage fraud allegations and sued on this basis as American Federal, including in Civil Action Nos. 06-cv-05841 and 11-cv-06275, each of which was brought in the United States District Court for the Northern District of Illinois.

18. On information and belief, AFFSI discontinued operating as and/or doing business as America Federal and commenced using the mark AMERICAN FIDELITY and the name American Fidelity Financial Services, Inc. in order to distance itself from previously filed fraud litigation brought against the company.

19. On information and belief, AFFSI has been the subject of mortgage fraud allegations and has been sued on this basis while engaged in unauthorized use of AMERICAN FIDELITY, including in Civil Action No. 14-cv-02601, which was brought in the United States District Court for the Northern District of Illinois.

## **COUNT I**

### **Trademark Infringement – 15 U.S.C. § 1114**

20. American Fidelity re-alleges the allegations contained in Paragraphs 1-19, above, as if fully set forth herein.

21. AFFSI's unauthorized use of AMERICAN FIDELITY and American Fidelity Financial Services, Inc., is likely to cause confusion, or to cause mistake, or deception with American Fidelity and services sold under the AMERICAN FIDELITY Name and Mark, or to result in the mistaken belief by consumers that AFFSI is connected with, sponsored by or approved by American Fidelity.

22. AFFSI's use of AMERICAN FIDELITY and American Fidelity Financial Services, Inc., constitutes trademark infringement under the federal Lanham Act, 15 U.S.C. § 1051, *et seq.*

23. As a direct and proximate result of AFFSI's trademark infringement, American Fidelity has suffered and is suffering irreparable injury. American Fidelity will continue to suffer irreparable injury until the Court enters an appropriate injunction.

## **COUNT II**

### **False Designation of Origin – 15 U.S.C. § 1125(a)**

24. American Fidelity re-alleges the allegations contained in Paragraphs 1-6 and 9-19 above, as if fully set forth herein.

25. AFFSI's unauthorized use of AMERICAN FIDELITY and American Fidelity Financial Services, Inc., is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of AFFSI with American Fidelity, or as to the origin, sponsorship or approval of AFFSI's offerings.

26. AFFSI's unauthorized use of AMERICAN FIDELITY and American Fidelity Financial Services, Inc., constitutes a false designation of origin under the federal Lanham Act, 15 U.S.C. §1125(a).

27. As a direct and proximate result of AFFSI's false designation of origin, American Fidelity has suffered and is suffering irreparable injury. American Fidelity will continue to suffer irreparable injury until the Court enters an appropriate injunction.

### **COUNT III**

#### **Common Law Trade Name and Trademark Infringement**

28. American Fidelity re-alleges the allegations in Paragraphs 1-6, 9-19 and 25 above, as if fully set forth herein.

29. AFFSI's aforesaid infringement of American Fidelity's AMERICAN FIDELITY Name and Mark constitutes trade name and trademark infringement under the common law of the State of Illinois.

30. As a direct and proximate result of AFFSI's trade name and trademark infringement, American Fidelity has suffered and is suffering irreparable injury. American Fidelity will continue to suffer irreparable injury until the Court enters an appropriate injunction.

### **COUNT IV**

#### **Common Law Unfair Competition**

31. American Fidelity re-alleges the allegations contained in Paragraphs 1-6, 9-19 and 25 above, as if fully set forth herein.

32. AFFSI's misconduct alleged herein constitutes unfair competition under the common law of the State of Illinois.

33. As a direct and proximate result of this unfair competition, American Fidelity has suffered and is suffering irreparable injury. American Fidelity will continue to suffer irreparable injury until the Court enters an appropriate injunction.

### **COUNT V**

#### **Violations of Uniform Deceptive Trade Practices Act – 815 ILCS 510/1, *et seq.***

34. American Fidelity re-alleges the allegations contained in Paragraphs 1-6, 9-19 and 25 above, as if fully set forth herein.

35. AFFSI's misconduct alleged herein constitutes a violation of the Uniform Deceptive Trade Practices Act, codified in Illinois at 815 ILCS 510, *et seq.*

36. As a direct and proximate result of these deceptive trade practices, American Fidelity has suffered and is suffering irreparable injury. American Fidelity will continue to suffer irreparable injury until the Court enters an appropriate injunction.

### **COUNT VI**

#### **Violations of Consumer Fraud and Deceptive Business Practices Act –**

#### **815 ILCS 505/1, *et seq.***

37. American Fidelity re-alleges the allegations contained in Paragraphs 1-6, 9-19 and 25 above, as if fully set forth herein.

38. AFFSI's misconduct alleged herein constitutes unfair methods of competition and unfair or deceptive acts or practices under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*

39. As a direct and proximate result of these deceptive business practices, American Fidelity has suffered and is suffering irreparable injury. American Fidelity will continue to suffer irreparable injury until the Court enters an appropriate injunction.

### **PRAYER FOR RELIEF**

WHEREFORE, American Fidelity prays that:

1. The Court enter judgment against AFFSI on each and every count;
2. AFFSI and its officers, directors, employees, agents, representatives, successors and assigns, and all others in active concert or participation with them, be preliminarily and permanently enjoined from: (a) using American Fidelity Financial Services, Inc., AMERICAN FIDELITY or any other mark, name, domain name, keyword or Twitter handle or other

designation that incorporates the words "American Fidelity"; (b) using in any manner any other mark, name, domain name, keyword, Twitter handle, or other designation that is confusingly similar to American Fidelity's AMERICAN FIDELITY Name and Mark; (c) doing any act or thing likely to confuse or to deceive consumers into believing that there is some connection between American Fidelity and AFFSI or between the parties' respective offerings; and (d) assisting, aiding, or abetting any other person or entity engaging in any of the activities prohibited in paragraphs (a)-(c) above.

3. AFFSI, and all others holding by, through or under AFFSI, be required, jointly and severally, to:

- (a) Account for and pay over to American Fidelity all profits derived by AFFSI, together with prejudgment interest, from their acts complained of herein in accordance with 15 U.S.C. §1117(a), and the laws of the State of Illinois and American Fidelity asks that the profits award be trebled in accordance with 15 U.S.C. §1117(a);
- (b) Pay to American Fidelity the amount of actual damages suffered by American Fidelity together with prejudgment interest, as a result of AFFSI's acts complained of herein in accordance with 15 U.S.C. §1117(a) and 815 ILCS 505/10a, and American Fidelity asks that this damages award be trebled in accordance with 15 U.S.C. §1117(a);
- (c) Pay to American Fidelity the costs of this action, together with reasonable attorneys' fees, in accordance with 15 U.S.C. §1117(a);
- (d) Change the "American Fidelity Financial Services, Inc." name registered with the Illinois Secretary of State or any other state to a name that does not use

the name and mark of American Fidelity, or any name or mark that incorporates "American Fidelity";

(e) Deliver up for destruction all labels, signs, advertisements, and the means of making the same in AFFSI's possession or control which bear American Fidelity Financial Services, Inc., or AMERICAN FIDELITY, in accordance with 15 U.S.C. §1118; and

(f) File with this Court and serve on American Fidelity a report in writing under oath setting forth in detail the manner and form in which it has complied with the terms of any injunction entered by this Court, in accordance with 15 U.S.C. §1116(a).

4. American Fidelity be granted such other and further relief as the Court deems just.

Dated: October 3, 2014

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,  
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